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THE WAR POWERS RESOLUTION:  
A FRAMEWORK FOR THE FUTURE?

BY

COMMANDER ELLIOTT L. BLOXOM  
United States Navy

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## USAWC STRATEGY RESEARCH PAPER

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### THE WAR POWERS RESOLUTION: A FRAMEWORK FOR THE FUTURE?

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Commander Elliott L. Bloxom

United States Navy

Professor Robin Dorff

Project Adviser

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U.S. Army War College

Carlisle Barracks, Pennsylvania 17013

## ABSTRACT

AUTHOR: Elliott L. Bloxom (CDR), USN

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The way in which the United States goes to war has always been a puzzle. Both the President and Congress insist each has certain rights to commit troops in conflicts; the matter reaches into history to a time before the Constitution. This paper examines the powers of each branch and the rulings of the court system. Through an analysis of the War Powers Resolution of 1973, it draws conclusions about the efficacy of the government's ability to decide how to go to war.

"Political liberty exists only when there is no abuse of power....To prevent the abuse of power, things must be so ordered that power checks power."

*Charles de Secondat*

*Baron of Montesquieu*

"At issue is not the wisdom of the President's action. . . . The issue is whether the Executive alone will make the decision as to continued involvement or must he come to Congress and obtain the judgment of Congress."

*Paul Sarbanes*

*U.S. Senate*

The interaction between the Executive and Legislative branches in the formulation of national policy, and control of the military, has been contentious since the birth of our nation. During the course of our nation's history the balance of power between these two branches has shifted from one body to the other, often with great impact on the course of the nation's affairs. This paper will examine the influence of Congress on the President's ability to commit the armed forces, particularly in recent times when there has been debate over the prerogative rights of the presidency in the absence of an authorized or declared war. Any attempt to calculate, or predict, the implications of the balance of power between these two branches of government is impossible since politics is an art, not a science. However, conclusions can be reached based on an examination of the past that our execution of national policy follows a periodic shifting of the balance of power between legislative and executive branches. This paper will examine the background issues of prerogative rights of both the presidency and congress, their responsibility for war powers, and the impact of the rapidly changing political environment brought about by the end of the Cold War. The focal point of this study in power will center on the War Powers Resolution, passed in 1973 over presidential veto; this resolution, while not particularly effective, provides the medium for a thoughtful approach to the question of where the power to commit armed force rightly lies.

This issue is extremely important to the future course of our nation, particularly in an era where our current, and foreseeable, national policy is one of enlargement and engagement. During the Cold War, when containment was

the dominant theme of policy, the President had broader authority, within the limits of a broad construct, to act without objection or interference from Congress. As the United States proceeds into the 21st century, the likelihood is higher that Congress will assume a role beyond their constitutional charter of providing for the armed forces. There will be competing interests, such as domestic concerns, a balanced budget, and debate over the nation's role as the "world's policeman." These competing interests will act to constrain the President's ability to conduct foreign policy without sharing a measure of the success and failure with Congress. In the words of the late Senator Vandenburg, Congress will again take a greater role in the take-offs of policy as well as the crashes.<sup>1</sup>

### HISTORICAL PERSPECTIVES

Why the long-standing dispute between the Presidency and Congress over war powers? To gain a complete sense of the ongoing discourse with respect to this issue, we need to examine the very principles on which our ancestors established our form of government. From the beginning of civilization, there have always been prerogative rights accorded the head of state, including the ability to commit the nation to war. The wielding of power by a head of state, without the people playing a role in decision making, gave rise to the writings of Locke, Paine, and Rousseau. They generally promoted a commonwealth of citizens in opposition to the monarchy. Even as modern governments were formed, placing a legislative body of citizens in the equation, the issue of prerogative rights of the British monarchy, and Parliament, was still a sore point. What was required was a government subservient to the people, and possessing a system of checks and balances.<sup>2</sup> In reaction to British abuses of power, the Articles of Confederation designated the Continental Congress as

the sole deliberative and decision making body of our early government.

Subsequent to the revolution, as our nation started to interact with other nations, it was quickly realized a quicker and more flexible ability to respond was required in matters of foreign diplomacy.

The drafters of the Constitution, in response to this need, incorporated the office of the President and provided the executive branch with, among other things, the power to negotiate with foreign governments and the role of the Commander-in-Chief of the armed forces. The latter was included primarily to ensure civilian control of the military. When the Constitution was drafted, the authors had envisioned that the executive and legislative branches would each be vigorous in their conduct, and their separate views would merge to shape the course of policy.<sup>3</sup> Not envisioned was the often bitter partisan debate resulting from a multi-party system and its effects on the balance of powers between these two bodies. A principal point of debate during the drafting of the Constitution concerned which body would control the use of armed force.

The decision to make the executive branch separate from Congress was a difficult one since there was great fear of the potential for tyranny. Thus it is postulated that the Constitutional Convention was intentionally vague with respect to the powers of each regarding the military, leaving it to future generations to decide as the country matured.<sup>4</sup> Of importance, this conflict over how to balance the power between branches was exacerbated by an inability to define accurately how much liberty should be sacrificed for the sake of security.<sup>5</sup>

The gist of the dilemma is the fuzzy delineation between the ability of Congress to declare war, and the President's role as Commander-in-Chief. The original draft of the Constitution granted the authority to Congress to "make" war. This wording was subsequently changed to "declare" since it was felt the

President needed the ability to counter quickly any armed threat to the nation, whereas the deliberative actions of Congress might impede a rapid response. Not willing to give all power to the President, again because of the fear of tyranny, the wording was changed based on the rationale that if a country attacked the United States, that action would suffice to cause a state of war. A declaration of war therefore represented an offensive action, and would require the deliberations of Congress. While there is not a great record of the deliberations in this regard compared to other constitutional issues, an insight to the issue can be found in the words of George Mason, a delegate from Virginia to the convention, who noted his reason for not clarifying the issue "...was for clogging rather than facilitating war."<sup>6</sup>

If the issue of who possessed the power to commit forces to war was unclear in the late eighteenth century, it only became further mired in controversy as time went on. When Thomas Jefferson dispatched naval forces to protect American interests challenged in the Mediterranean by the Barbary pirates, he was careful not to step outside his understanding of Congress' role in authorizing war. Indeed, when as a result of the delay in information reaching Washington he discovered the extent to which the Navy had taken action, he was apologetic to Congress for actions perceived to be beyond Congressional authorization.<sup>7</sup> While this example demonstrates how well the presidency can work with Congress, it is an example rarely seen in the course of our history. Of approximately two hundred armed interventions overseas by U.S. forces, only five of them have been declared wars. The remainder have been a result of initial action by the President, although Congress has provided authorization subsequent to the President's first move in many cases.<sup>8</sup> There are several

factors which have caused this phenomenon and, in general, blame can be shared by both the executive and legislative branches.

The presidency is structured to be able to respond quickly to emergencies, a function of its vertical command organization.<sup>9</sup> The President is the only person in the executive branch who is elected; all other personnel within that branch answer to the President. As such, the President is also able to claim a popular mandate and to speak for the all the people. Congress on the other hand, is horizontally organized, each member beholden to his or her geographic constituency. Although there is hierarchical organization with the leadership, all members of the House of Representatives and the Senate are equal with regard to vote. This diametrically opposed structure has reduced the ability of Congress to respond in a prompt manner since a united response on its part requires consensus building among a large group of representatives not beholden to each other. This deliberative structure is ideally suited to examining thoroughly all facets of a problem and, through statute, providing boundaries for action to the executive branch.<sup>10</sup> The President has often used this to his advantage by acting without the support of Congress. This may indicate one of two things: First, Congress is submissive and unlikely to object, or second, that Congress is powerful and likely to intervene if a proposed action is brought to it for consideration.<sup>11</sup>

The President is also at an advantage as a result of his ability to rally public opinion based on his position as Head of State. In cases of anti-terrorism, protection of U.S. citizens, and peacekeeping, the Congress understands that its ability to intervene is hampered by both the popularity of the President and the issue at stake. This erodes Congressional ability to take on the tough issues when they arise.<sup>12</sup>

## THE WAR POWERS RESOLUTION

Having examined the history of the power struggle between the executive and legislative branches, we will now look at the recent past in order to examine what steps Congress has taken with respect to control of the armed forces. While all Presidents since World War II have consulted with Congress to some extent, Richard Nixon set a new trend of independence. Although Congress passed the Tonkin Gulf Resolution authorizing U.S. involvement in Vietnam during the Presidency of Lyndon Johnson by a resounding majority, perceived Presidential abuse of this authorization was driving Congress to feel increasingly isolated with respect to its ability to provide effective oversight of foreign policy. As the United States became increasingly mired in a conflict without public support, Congress took steps to ensure the powers of the presidency would not be able to further commit forces without a proper system of checks and balances. On November 7, 1973, Congress passed the War Powers Resolution (WPR) into law over President Nixon's veto. The WPR was an attempt by Congress to clarify the vague constitutional definition of the prerogative powers of the executive and legislative branches.<sup>13</sup> To understand Congressional intent, it is necessary to examine some of the details of the law. A further review of the problems associated with the WPR, and a study of its application through several cases which point out its particular strengths and glaring weaknesses, will suggest a need for some method to resolve future conflicts between these two branches of government.

The first, and most fatal, weakness of the resolution is that the President vetoed the bill. The intent of Congress in passing the bill was to create a mutually acceptable framework to facilitate cooperation between the executive

and legislative branches; the effect of the veto, along with the questionable constitutionality of some of its sections, created quite the opposite result -- it came to cause further divisiveness.<sup>14</sup> In its attempt to rein in the ability of the President to commit armed forces overseas without Congressional approval, Congress stipulated that whenever forces equipped for combat were introduced into hostilities, or situations of near hostility, the President was required to notify Congress within forty-eight hours. The notification would further provide the Executive's reason for the action, and the expected termination date of the operation. If the President did not provide such notification Congress would establish a date from which the WPR clauses would take effect with regard to the operation. If Congress had not acted upon the initial notification, within sixty days the forces would be required to be withdrawn from the theater, unless the President certified an extra thirty days were required in order to complete the withdrawal. While the WPR claims to not interfere with the constitutional rights of the President, the "pursuant to" clause in Section 2(c) of the WPR is damaging to the spirit of cooperation. In it the President is authorized to act in his capacity as Commander-in-Chief only pursuant to the authorization of Congress. This has acted as a damper on the willingness of any President to accede to the requirements of the Resolution, for doing so would be to admit the President was subservient to Congress.<sup>15</sup> Most controversial, regardless of the degree of cooperation from the President, Congress insists it has the right to terminate operations through use of a concurrent resolution. Unlike a joint resolution or a bill, a concurrent resolution is not presented to the President for signature. As we will see in a review of court actions both prior to and subsequent to passage, this "veto" authority of the Congress has been deemed most likely unconstitutional and is probably the Achilles' heel of the resolution.

The Supreme Court ruled in INS vs Chadha that the use of a concurrent resolution is not legal.<sup>16</sup> The President has consistently maintained that the War Powers Resolution is not constitutional, and there have been no cases where the executive branch has complied fully with the requirements. Although there have been many reports provided to Congress regarding deployment of armed forces, the President has always worded the report as being "consistent with" or "in the spirit of" rather than being "pursuant to" the reporting requirements. With one exception, Congress has not challenged the report from the President, and as will be seen with the Lebanon case, there was no real challenge, but instead increased assertiveness on the part of Congress.

To fully understand the court's decisions with regard to the war powers issue, we need to examine the prerogative rights of Congress as well as how the courts reach a decision. In Article I of the Constitution, Congress is given not only the obvious power of lawmaking, but more importantly to this issue, the responsibility for appropriating monies, confirmation, and oversight. The "power of the purse" is the major power, since if Congress does not agree with a position, they are technically, although maybe not politically, able to cut off funding and therefore terminate a program or an operation. The courts, on the other hand, pass rulings based on the principle of *stare decisis*, or utilizing previous court rulings to determine the constitutionality of a case. That prerogative powers are beyond precedent is established by definition; therefore, the courts have tended to assume a very non-committal role regarding disputes between the executive and legislative branches.<sup>17</sup> The Supreme Court has consistently taken the position that the President, as Commander-in-Chief, should have the freedom to employ the armed forces as he sees fit. This is

based on the assumption that if Congress does not like the action, they have the power to terminate the funding. What is important is the Supreme Court's view that both of these abilities are consistent with the constitutional authority of each branch.<sup>18</sup> In a lawsuit initiated by Congress challenging the President's authority to send troops to El Salvador, U.S. District Court Judge Green dismissed the suit, stating that the "...subtleties of fact finding in this situation should be left to the political branches."<sup>19</sup>

What is remarkable about the WPR is what is not included. The bill does not address the protection of U.S. citizens overseas, a cause for use of force which can be traced back to many of our past conflicts. In 1847, a United States federal judge ruled in Durand vs Hollins, involving a retaliatory raid on Nicaragua, that the President had sole discretion for the protection of the lives and property of our citizens overseas.<sup>20</sup> This clear grant of responsibility to the President to protect U.S. lives and property overseas, particularly in today's world with U.S. citizens, armed forces, and commercial interests widespread around the globe, has often been used as justification by the President to take action without Congressional authorization. Much to the chagrin of Congress, the American people expect the President to take action in such cases and there is little Congress can do in shaping policy other than to rally around the flag. This rallying goes much further than providing a show of solidarity for the use of force to protect citizens. It becomes a political dilemma for the members of Congress because if they do not demonstrate support, they may not be reelected. This "rallying" effect causes difficulty for Congress as a body. The combined emotions and ideologies of 535 members make accomplishing anything a slow process. To pass a resolution supporting the President on his decision to commit troops to Operation Desert Shield took two months. While

the deployment was popular in the U.S. and abroad, the delay suggests Congressional fear of involvement or possibly fear of supporting the President, thereby eroding the powers of Congress.<sup>21</sup> Two cases in particular, one of which will be examined later in greater depth, demonstrate the problem Congress has had with this dilemma: First, the Mayaguez rescue, and second, the rescue of American students in Grenada, with the subsequent action to depose the installed government and replace it with one more in keeping with U.S. ideology. In both cases, the applicability of the War Powers Resolution was clearly apparent, yet the President complied minimally, if at all.<sup>22</sup>

The issue of war powers, and Congressional assertion of its rights by passage of the WPR, has been fundamentally one of Congress desiring to take part in the decision to go to war. Congress has traditionally been the junior partner in shaping foreign policy, which would include war powers. Instead, it has tended towards greater domestic emphasis where members can better meet the expectations and needs of their constituents. The growth of Congressional staffs during the past twenty years, as well as the advent of the Congressional Research Service and the Office of Technology Assessment, have allowed the members to be better informed on international issues.<sup>23</sup> Consultation, followed by deliberation, is what Congress desires; Congress claims that the executive branch does little more than provide notification of impending action -- not providing enough time for discourse or advice to the President. While the intent of Congress is honorable, it is a two-way street. President Eisenhower made a point of always trying to consult with Congress. Yet, when he attempted to consult with that body regarding U.S. policy towards the flare-up of Quemoy and Matsu, and again during the Middle East crisis of 1957, Congress wanted no part of the discussion.<sup>24</sup> The effectiveness of seeking meaningful dialogue with

Congress is also hampered when the subject of proposed operations requires secrecy. In 1980, President Carter authorized a joint operation to attempt the rescue of the American Embassy hostages in Iran. While there was certainly adequate time to consult with Congress regarding the U.S. approach to the issue, since planning had begun several months before the attempt, the executive branch came to the conclusion that the risk of compromised security was extreme. Therefore, Congress was not notified of the operation until forces were already enroute.<sup>25</sup>

### CASE STUDIES

The involvement of U.S. Marines in Lebanon from 1982-1984 is a good case to examine, for it contains all elements pertaining to the War Powers Resolution. In the summer of 1982, in response to the assassination of the Israeli ambassador to Britain, Israel invaded southern Lebanon because of the terrorist activities the PLO had been staging from Lebanon for years. The Israeli forces contained the PLO forces in the western section of Beirut where there was potential for extremely high casualties to all sides. The United States offered troops to provide security for a peaceful withdrawal of forces; several days later the Lebanese government had arranged a multi-national force, with U.S., French, and Italian troops agreeing to take part in the operation. President Reagan directed the landing of approximately 800 Marines in Beirut to take part in this mission. While the President had originally informed Congress he would comply with the War Powers Resolution, when Congress questioned the deployment, the President replied that since the U.S. had been invited to take part in a peacekeeping operation and there was no threat of hostilities, the mission did not fall under the provisions of the WPR. In any event, the

withdrawal of PLO forces was accomplished within two weeks and the Marines were redeployed on their ships in the Mediterranean.

Within a month, Bashir Gemayel, the President-elect of Lebanon, was assassinated by a terrorist's bomb, and in retaliation Lebanese forces loyal to Gemayel entered refugee camps outside of Beirut and massacred several hundred refugees who were supposedly loyal to the PLO. Again, the government of Lebanon requested assistance in maintaining peace.<sup>26</sup> On September 20, President Reagan offered U.S. assistance in forming another multi-national effort such as the one which had been in place a month earlier, this time offering 1,200 Marines. Congress reacted to the unilateral announcement by complaining about the lack of consultation, and urged the President to invoke the War Powers Resolution. A week later, as the troops were landing in Lebanon, the Administration provided notification of the operation to Congress, but the wording of the notification was such that the deployment was "consistent with" and not "pursuant to" the WPR. The notification claimed that, while the forces were equipped for combat, the troops were not being introduced into hostilities or threatened hostilities. Congress, at this point with troops committed on foreign soil, had little chance to affect the policy other than by using its appropriations powers. Based on the success demonstrated during the PLO withdrawal operation in late August and early September, along with the concomitant lack of casualties and the fact the peacekeeping operation was popular, there was no perceived need by Congress to take any drastic measures. Unfortunately, the situation in Lebanon gradually deteriorated for the Marines, largely as a result of the policy of the U.S. government of favoring the Christian Maronite sect in power, rather than assuming a neutral stance.

The United States has a characteristic flaw of backing a previously recognized government at all costs and not being able to realize that changing considerations may make it more feasible to change our policy. As in today's situation in the former Yugoslavia, the divisiveness in Lebanon was based not only on philosophical differences, but ethnic and religious differences as well. As President Reagan continued to back the existing leadership in Lebanon, the Shiite and Druze factions of the population began to see the Marines as a force loyal to the Christian government, and therefore a target for their attacks against the government.<sup>27</sup> During the summer of 1983, the Lebanese Army was supported by U.S. naval gunfire as it attempted to regain territory in the Chouf Mountains as the Israeli forces withdrew. While the potential for hostilities was rising, the Administration continued to insist the national goal was an end to the civil war, and the mission of the Marines was to keep the peace and not to become engaged in hostilities. The situation took on a new tone in April 1993 when the U.S. Embassy in Beirut was bombed, resulting in the deaths of more than fifty U.S. citizens.

The spilling of U.S. blood on foreign soil drove Congress to take a more assertive role in the shaping of our policy towards Lebanon. Arguing that the War Powers Resolution needed to be invoked, there was much bitter debate on Capitol Hill over what interests we had in Lebanon. At the same time, there was disagreement over how to proceed; one group in Congress thought the WPR timing provision should be triggered, the other thought it would send a clear signal to potential terrorists or enemies. This signal of intent on our part would indicate that, in the future, all they would have to do was cause difficulties for the United States and wait the sixty days until U.S. forces were withdrawn as a result

of the War Powers Resolution. During a summer in which the first U.S. Marine casualties were incurred due to Druze artillery, a compromise was crafted wherein Congress achieved an agreement with the Administration in which an eighteen-month time limit was established and which would declare the War Powers Resolution to be in effect. The President, on the other hand, could still maintain the claim that the executive branch did not recognize the Resolution since it had not been invoked by the President. After much debate, particularly in the House where the ruling Democratic Party wanted to go further and cut off funding, the bill passed and was signed into law in early October. This compromise, which demonstrated a great deal of give and take between Congress and the President, and could have served as a benchmark for future cooperation, was rendered moot on October 23, when a suicide bomber drove a truck into the Marine barracks compound. The explosion was responsible for the loss of 241 American lives and the eventual termination of U.S. involvement in Lebanon. Although debate continued, and the President still attempted to show resolve to stay the course in Lebanon, within a few months the troops were withdrawn back to the safety of their ships off the coast of Beirut.

There are several relevant lessons pertaining to the control of war powers to be gained from examining our involvement in Lebanon. While Congress had the opportunity to exert itself in formulating policy, and indeed did so as the peacekeeping operation started to look more like a war, it was initially hampered in those efforts by the preemptive move by the President. The rationale provided for the second deployment of troops was the same as that used in the first successful operation; this forced Congress to acquiesce even though the situation was greatly different. The War Powers Resolution, or any congressional resolution, can only be effective with the full support of the entire

Congress. The actions of the President to persuade Congress, to include the opposition party, can dramatically shift the balance of power. As the deployment in Lebanon drew to a close, there was increasing solidarity in Congress, a fact which forced the President to withdraw troops in the face of escalating congressional pressure.<sup>28</sup>

As the United States became increasingly mired in Lebanon in the fall of 1983, another development was brewing, this time in the western hemisphere. Grenada, a small island nation in the Caribbean, had been causing problems to the administration since 1979 when its democratic government was replaced by a Marxist government. This government was friendly with Cuba and was utilizing Cuban support to build an airfield capable of handling aircraft larger than that required to support commercial interests.<sup>29</sup> On October 13, 1983 the government of Grenada was overthrown in a coup which installed a government feared to be representative of factions from the extreme left. This development caused great concern to other Caribbean nations and the United States, which immediately diverted a carrier battle group to the Caribbean. After State Department discussions with other members of the Organization of American States (OAS), President Reagan gave the go ahead on 20 October for military operational planning should that course be chosen.<sup>30</sup>

On 23 October, the same day the Marine barracks in Beirut was bombed, the President approved U.S. participation in an OAS coalition assault on Grenada, a plan which hinged on U.S. involvement. Congressional leaders were notified that evening, and several thousand troops landed on Grenada the following morning. The operation did not go as well as planned because there were significant U.S. casualties, but the American students were rescued and the government was ousted and replaced by a democratic administration.

Further analysis of the campaign is not warranted since it yields little information regarding interaction between the executive and legislative branches.

Interestingly, the close timing of the Beirut bombing and the approval of an assault on Grenada may have indicated a desire on the part of the President for a military success as a reason to hold off an increasingly hostile Congress. The Administration's planning and execution of the Grenada invasion led to cries of indignation on Capitol Hill. The mechanics of the situation are interesting to examine but, interestingly enough, did not restore any power to Congress since the operation had been largely successful in meeting its objectives. To quote Pat Holt, a former staff director of the Senate Foreign Relations Committee, "The general principle seems to be that success has few autopsies; the corpse of a failure is picked to pieces."<sup>31</sup>

The President had several weeks between the time of the coup in Grenada and the invasion to consult with Congress; indeed, OAS had sufficient time to consult at length with the State Department over proposed courses of action and U.S. involvement. Yet, as noted, Congressional leaders were notified just prior to the operation's commencement. Clearly, President Reagan wanted to proceed with the operation in order to claim a victory for the United States in the wake of impending political, as well as military, defeat in Lebanon. Congress was exerting their influence over our policy in Lebanon at the time, to include offering bills cutting off all funding for the mission. To consult with Congress about sending troops to another part of the world without clear national interests would no doubt have met with considerable resistance on the part of Congress. As well as a lack of consultation, there was no reporting of the invasion in accordance with the War Powers Resolution. The requirement for reporting was clear in that U.S. troops, equipped for combat, were being introduced in

substantially large numbers into a situation of imminent hostilities. Although no President has ever agreed to the constitutionality of the Resolution, if there were ever a case where administration actions met the intent of Congress, this was the case. A report was submitted to Congress after the invasion had started but, as in prior cases, it made mention only of being "consistent with" the War Powers Resolution.

In effect, the President's actions in both Lebanon and Grenada acted to strengthen the role of the Executive in relation to Congress. A popular President, acting on an issue popular with the people, is almost immune from Congressional pressure since that very popularity threatens their re-election potential if they are perceived as not supportive. Congress has shown very little resolve over the past twenty-three years to insist on compliance with the War Powers Resolution; this is largely a function of the legislative branch not having a preponderant majority when an unpopular military action takes place. It must also be remembered that the WPR was not crafted to force compliance with minor conflicts. It was drafted during the Vietnam conflict, an undeclared but Congressionally authorized war, which involved as many troops as were in any other national conflict, except for the two world wars of this century.<sup>32</sup>

## CONCLUSION

What, then, does the future hold for relations between the executive and legislative branches? As the United States takes on an increased role as the world's policeman, will Congress control the President in committing our forces overseas? The fact that "war" is no longer an option in today's world is bound to have an impact in determining the proper balance between these two branches of government. A review of our nation's history should lead the reader to agree that some form of arrangement is necessary to establish a base for cooperation

between Congress and the President which will serve for the betterment of our national interests.

The prerogative power to declare war has been nullified due to the United States being a signatory to the United Nations Charter, which requires members to renounce the right to go to war.<sup>33</sup> That there have been no declared wars since World War II and the advent of the United Nations bears this out. The issue now, and for the foreseeable future, is who in our government will be able to commit forces into situations of armed hostility. This is exactly the question the framers of the Constitution attempted to settle, but were unable to resolve. With the passing of the Cold War, the national strategy of containment, which existed for almost a half-century, has been replaced with a strategy of enlargement and engagement. This new era, with a single superpower, will affect the direction of U.S. foreign policy and the commitment of troops overseas in ways we are just starting to discover. Without an "enemy" which the President can use to rally the public, and therefore Congress, we are bound to see a more assertive Congress with regard to the course the nation takes in international diplomacy.<sup>34</sup>

The role Congress will take in becoming a more assertive and influential force is due to the lower threat to the nation, and subsequently, lower national security stakes. Ideally, increased warning time and a lessened threat will allow Congress the time it needs to take measures under full consideration and provide coherent policy guidance to the President. Also, Congress will take on the role of arbitrator of national policy in non-traditional challenges such as peace-keeping and multi-national roles such as the United Nations might request. This would leave the President to maintain the traditional role of foreign policy, constrained by constituent interest to the extent Congress decides to use

the power of the purse through the appropriations process.<sup>35</sup> The role that Congress assumes in the future will be more in keeping with the Constitutional process in which management through oversight and control of the purse is the forte of the deliberative body. Due to the decreased time government will have to respond to events due to increased efficiency of communications, they will have to form a mutually agreed upon framework which will provide boundaries within which the President can act in promoting U.S. interests abroad. The ability of the American public to observe events as they are happening around the world will no doubt shorten the time available for consultation and deliberation.<sup>36</sup>

The recent involvement of U.S. forces in Somalia, with television coverage of American bodies being dragged through the streets, forced the executive branch into extensive consultation with Congress. This discourse, which included the first-time invitation of a large group of Congressmen beyond the traditional Congressional leadership to a meeting at the White House, resulted in the Administration establishing a date for the withdrawal of troops from Somalia. Not to be content, Congress followed up this agreement with an amendment to a defense appropriations bill not only cutting off funding for Somalian operations, but further specifying how U.S. troops could be used in the future under foreign command.<sup>37</sup> This action clearly shows Congressional resolve to take part in the formulation of foreign policy. However, the President's actions in committing forces in the military occupation of Haiti in 1994 were conducted without Congressional support or authorization. Where will the debate over the control of forces in foreign disputes end? Today we conduct military operations world-wide in support of the training of foreign militaries. An interesting argument could be made about the propriety of deploying forces for

training to an area in which hostilities could be deemed to be imminent. This is a situation the United States confronts on a much more frequent basis, and it does not fit with the model provided by the War Powers Resolution.

An argument could be made that with the end of the Cold War, the provisions of the War Powers Resolution are no longer valid. During recent years, Congress has become much more influential in wielding the powers of oversight and appropriations, suggesting that there is no reason for a resolution to control the presidency. Indeed, in 1995 a motion to strike key provisions of the War Powers Resolution failed to pass by only sixteen votes in the House of Representatives.<sup>38</sup> The War Powers Resolution has never been tested, but its effectiveness has always been questioned. In any event, it has served as a key part of the Congress reining in the power of the presidency in conducting foreign policy without advice and consent. What the resolution has done is to allow debate which precludes "group think" within a group of people in the Executive who are not responsible to an electorate. However, while this deliberation is fine with public interests, it is often not compatible with issues of foreign policy which require expediency, flexibility, and the need for secrecy.<sup>39</sup>

Relevant to the discussion of events occurring today is how the United States will consider peacekeeping operations with regard to the possible need to invoke war powers. Peacekeeping, such as we are seeing in Bosnia, by necessity places our troops in a situation where they are equipped for combat and proximate to hostilities, or imminent hostilities. In most cases, it could be argued that they are deployed in substantially greater numbers than in the past. As we deploy our troops into potential hot-spots around the world, Congress is assuming a greater role in questioning the wisdom of such deployments. In hearings before the Senate Armed Services Committee in 1992 regarding the

U.S. role in Bosnia, two key points were stressed: First, Congress displayed a profound knowledge of lessons learned from past experiences, and second, they displayed a keen sense of subsequent effects. First, Congress wondered whether or not the United States was acting as a non-partisan actor in the conflict to the point of directly asking witnesses if we were taking sides, as the United States did in Lebanon.<sup>40</sup> Second, and more importantly, Congress questioned whether or not the issue needed to be resolved, prior to deployment of troops, of what would happen if peacekeeping were to become peacemaking with the resultant use of armed force against a belligerent of an unknown, but heretofore friendly, nature.<sup>41</sup>

Recent press articles have brought the past considerations of Congress to the forefront. With our armed forces currently deployed to Bosnia, there is increasing debate as to whether or not the deployment will conclude at the end of a one- year period as proclaimed by the President. The North Atlantic Treaty Organization (NATO), under which the United States is taking part even though responsible for the lead, is starting talks to consider an extension of the peace-keeping mission. This is occurring in spite of the Administration's insistence that U.S. forces will only participate for the one-year period. A senior diplomat from northern Europe has stated that if the United States does not participate in maintaining the accords between the warring factions, then other allied forces would necessarily have to withdraw from the theater, resulting in a collapse of the coalition.<sup>42</sup> Further aggravating the situation is the potential for mission creep, or an expansion of what was originally stated in order to gain support from the populace for a mission. Recently, U.S. forces have become involved in providing support to representatives of a non-governmental organization, to include armed support if required. This increase in mission, once troops are

committed, begs the question of how the U.S. government will manage future operations when many of the details of the mission cannot be known during the course of deliberation.<sup>43</sup>

From the foregoing analysis, it can be seen that there is no easy solution to the question of who should properly wield the powers of committing U.S. forces into situations which might require combatant action. The War Powers Resolution, passed into law over twenty years ago, was an attempt to provide direction; unfortunately, it was influenced by the emotions resulting from an unpopular conflict and the fear of an imperial presidency wresting power from Congress. Through an objective examination of events since passage of the Resolution, it can be seen there is a great need for detailed cooperation between the executive and legislative branches in efficiently coordinating the foreign policy of the United States. There must be a system agreed upon by all principals in the foreign policy process. There is no longer the luxury of time to deliberate. What must be accomplished is to deliberate now about how future events may be handled, establish a series of boundaries, and then allow the normal functions of government to proceed. Whether this deliberation leads to another resolution is not important; what is required for the future is for each branch of government to know the bounds of its conduct before it needs to consult further. The exigencies of today's world do not allow anything else.

## END NOTES

<sup>1</sup>Robert F. Turner, The War Powers Resolution: Its Implementation in Theory and Practice (Philadelphia: Foreign Policy Research Institute, 1983), 123.

<sup>2</sup>Daniel P. Franklin, Extraordinary Measures: The Exercise of Prerogative Powers in the United States (Pittsburgh: University of Pittsburgh Press, 1991), 127-128.

<sup>3</sup>Donald M. Snow and Eugene Brown, Puzzle Palaces and Foggy Bottom (New York: St. Martin's Press, 1991), 31-32.

<sup>4</sup>John T. Rourke, Presidential Wars and American Democracy: Rally 'Round the Chief (New York: Paragon House, 1993), 65.

<sup>5</sup>Franklin, 13.

<sup>6</sup>Rourke, 66.

<sup>7</sup>Ibid., 69.

<sup>8</sup>Ibid., 11.

<sup>9</sup>Franklin, 41.

<sup>10</sup>Ibid., 79.

<sup>11</sup>Jeremy D. Rosner, The New Tug of War: Congress, the Executive Branch, and National Security (Washington: Carnegie Endowment for International Peace, 1995), 16.

<sup>12</sup>Bruce Russett, Controlling the Sword (Cambridge: Harvard University Press, 1990), 151.

<sup>13</sup>Pat M. Holt, The War Powers Resolution (Washington: American Enterprise Institute, 1978), 1.

<sup>14</sup>Marc E. Smyrl, Conflict or Codetermination? (Cambridge: Ballinger Publishing Co., 1988), 140.

<sup>15</sup>Turner, 11.

<sup>16</sup>Smyrl, 65.

<sup>17</sup>Franklin, 11-12.

<sup>18</sup>Turner, 26.

<sup>19</sup>Referring to the case of Crockett vs Reagan cited in Ellen C. Collier, The War Powers Resolution: A Decade of Experience (Washington: Congressional Research Service, 1984), 22.

<sup>20</sup>Franklin, 57-58.

<sup>21</sup>Rourke, 25.

<sup>22</sup>Smyrl, 71.

<sup>23</sup>Snow, 141-142.

<sup>24</sup>Rourke, 94.

<sup>25</sup>Smyrl, 42.

<sup>26</sup>Turner, 81.

<sup>27</sup>Smyrl, 100.

<sup>28</sup>Ibid., 96.

<sup>29</sup>Ibid., 69.

<sup>30</sup>Ibid., 71.

<sup>31</sup>Holt, 33.

<sup>32</sup>Smyrl, 147.

<sup>33</sup>Donald M. Snow, National Security: Enduring Problems in a Changing Defense Environment (New York: St. Martin's Press, 1991), 85.

<sup>34</sup>Rosner, 33.

<sup>35</sup>Ibid., 19.

<sup>36</sup>Smyrl, 147.

<sup>37</sup>Rosner, 72.

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<sup>38</sup>*Ibid.*, 18.

<sup>39</sup>Rourke, 6.

<sup>40</sup>Congress, Senate, Committee on Armed Services, Situation in Bosnia and Appropriate U.S. and Western Responses: Hearing before the Senate Committee on Armed Services, 102nd Cong., 2d sess., 11 August 1992, 36-37.

<sup>41</sup>*Ibid.*, 50-51.

<sup>42</sup>"NATO May Stay Longer in Bosnia," Carlisle (PA) Sentinel, 29 March 1996, sec A, p.1.

<sup>43</sup>"US Troops to Protect War Crimes Probers," Carlisle (PA) Sentinel, 1 April 1996, sec A, p.4.

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